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**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 91-1037

September Term, 19 91

Action on Smoking and Health,  
Petitioner  
v.

Occupational Safety and Health Administration  
and  
United States Department of Labor,  
Respondents

91-1038

Action on Smoking and Health,  
Petitioner  
v.

Occupational Safety and Health Administration  
and  
United States Department of Labor,  
Respondents

United States Court of Appeals  
for the District of Columbia Circuit

FILED JAN 29 1992

CONSTANCE L. DUPP  
CLERK

A True copy:

Test: Constance L. Dupp  
United States Court of Appeals  
for the District of Columbia Circuit

By: Stephan L. Dupp Deputy Clerk

2046396040

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 91-1037

September Term, 19 91

BEFORE: Mikva, Chief Judge; Ruth B. Ginsburg and Buckley,  
Circuit Judges

## O R D E R

Upon consideration of the motions to dismiss, the responses thereto and the replies; the motions for leave to file a response; the motions for consideration by a single panel and the responses thereto; the motions to correct omission from the record and the responses thereto; the motions to defer proceedings and the responses thereto; and the response to the court's order for further submissions and the reply, it is

ORDERED that the motions to dismiss the petitions for review be granted to the extent that the petitions seek review of non-final agency orders. Neither the November 30, 1990, letter from the Occupational Safety and Health Administration ("OSHA") to petitioner, nor the December 14, 1991, OSHA status report filed in No. 89-1656, represents final agency action relating to the regulation of tobacco smoke in the workplace. It is

FURTHER ORDERED that these petitions for review, to the extent they seek a writ of mandamus to compel agency action, be denied. The agency's delay is not so egregious as to warrant the extraordinary remedy of a writ of mandamus. See Telecommunications Research and Action Center v. FCC, 750 F.2d 70, 80 (D.C. Cir. 1984). We are satisfied by OSHA's representation that it will decide whether and how to regulate exposure to tobacco smoke in the workplace as soon as possible following analysis of the comments it receives in response to the September 20, 1991, Request for Information on Occupational Exposure to Indoor Air Pollutants. See 56 Fed. Reg. 47892 (1991). This order is without prejudice to renewal of petitioner's request in the event that OSHA unreasonably delays resolution of this matter following receipt of comments. It is

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U.S. COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA  
By Stephen Carter Deputy Clerk

2046396041

United States Court of Appeals  
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FURTHER ORDERED that the remaining motions be dismissed as moot.

The Clerk is directed to withhold issuance of the mandates herein until seven days after disposition of any timely petition for rehearing.

Per Curiam

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*Seppala*

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